

DIVISION OF REAL ESTATE  
DEPARTMENT OF COMMERCE  
P.O. BOX 146711  
160 EAST 300 SOUTH  
SALT LAKE CITY, UTAH 84114-6711  
Telephone: (801) 530-6747

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BEFORE THE DIVISION OF REAL ESTATE OF  
THE DEPARTMENT OF COMMERCE  
OF THE STATE OF UTAH

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In the Matter of the Application of  
**DANNY GUTIERREZ** to Act as a Real  
Estate Sales Agent

ORDER ON APPLICATION FOR  
RENEWAL

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On April 28, 2010, Danny Gutierrez (Applicant) submitted to the Utah Real Estate Commission (Commission) and the Division of Real Estate (Division) an application to renew his license to practice as a real estate sales agent. The application was reviewed in an informal proceeding to determine whether Applicant meets the licensing requirements of Utah Code Ann. § 61-2-6(1)(b) (2009). The presiding officer, on behalf of the Division and pursuant to a grant of authority from the Commission, now makes the following analysis and order.

**REASONS FOR DECISION**

On March 23, 2010, on the basis of an information, Applicant was charged in case number 101400650 with burglary, a second degree felony; and with assault, a class A misdemeanor. Applicant's attorney submitted a letter of explanation stating that Applicant contests the charges and disputes the allegations in the information. The case is proceeding in court.

Utah Code Ann. § 61-2-6(1)(b) (2009) requires that the Division and Commission determine whether an applicant meets the requirements of honesty, integrity, truthfulness,

reputation, and competency. Utah Admin. Code § R162-2-2.11 requires the Division and the Commission to consider criminal cases in making this determination.

The presiding officer is concerned about the serious nature of the charges pending against Applicant. However, where the facts are contested and yet to be determined in court, there are no findings on which the presiding officer may draw a conclusion as to Applicant's honesty, integrity, truthfulness, or reputation. Should the matter be resolved against Applicant, it would be difficult, if not impossible, for Applicant to qualify for licensure under the statutes and rules governing real estate licensees. On the other hand, should the matter be dismissed or otherwise resolved in favor of Applicant, there would be no basis from which to take an administrative action against Applicant's license.

Where Applicant contests the charges against him, and where the outcome of the criminal case will almost certainly determine whether Applicant qualifies for licensure, the presiding officer finds it reasonable to issue a probationary license during the pendency of the criminal case.

### **ORDER**

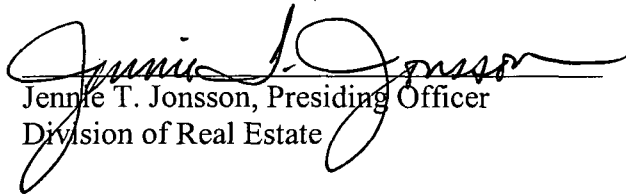
Based on the above analysis, Danny Gutierrez's application for licensure as a real estate sales agent is granted with restriction. The license is placed on probation during the pendency of criminal case number 101400650. Pursuant to Utah Code Ann. § 61-2-7.2, Mr Gutierrez shall report to the Division upon entering into a plea in abeyance, a diversion agreement, or any other agreement under which the charges are held in suspense, or upon suffering a conviction. Should the charges be dismissed or the case otherwise be resolved in his favor, Mr. Gutierrez may petition the Division to terminate the license probation. During the probationary period Mr. Gutierrez shall comply with all laws and with the rules regulating his profession, and shall

conduct himself in a way that demonstrates his qualification and fitness for continuing licensure as a sales agent.

This order shall be effective on the signature date below.

DATED this 3rd day of May, 2010.

UTAH DIVISION OF REAL ESTATE

  
Jennie T. Jonsson, Presiding Officer  
Division of Real Estate

Notice of Right to Administrative Review:

Review of this order may be sought by filing a written request for administrative review with the Director of the Division of Real Estate within thirty (30) days after the issuance of this order. Any such request must comply with the requirements of Utah Code Ann. § 63G-4-301 and R151-46b-12 of the departmental rules.

CERTIFICATE OF MAILING

I hereby certify that on the 3 day of May, 2010, a true and correct copy of the foregoing document was sent first class mail, postage prepaid, to the following:

Danny Gutierrez  
1078 Gadzooks Dr.  
Sandy, UT 84094

Renda Christensen